IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
March 16, 2015 Session

VANDERBILT UNIVERSITY v. PAMELA A. JONES

Appeal from the Chancery Court for Davidson County
No. 12-432-III Ellen Hobbs Lyle, Chancellor

No. M2014-00722-SC-R3-WC – Mailed August 4, 2015
Filed October 19, 2015

Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. The trial court found that Employee's bilateral knee replacements related to a work-related injury she suffered on March 20, 2004, and that any claim for compensation related to an injury she sustained on February 6, 2011 was barred by the doctrines of judicial and equitable estoppel. Employee has appealed. We reverse the trial court's judgment and remand for further proceedings.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Davidson Chancery Court Reversed and Remanded.

BEN H. CANTRELL, SR.J., delivered the opinion of the Court, in which JEFFREY S. BIVINS, J., and W. NEAL MCBRAYER, SP.J. joined.

B. Timothy Pirtle, McMinnville, Tennessee, for Employee, Pamela A. Jones

Raymond S. Leathers, Nashville, Tennessee, for Employer, Vanderbilt University.

OPINION

I. Factual Background

Pamela A. Jones ("Employee") worked as an anesthesia technician for Vanderbilt University ("Employer") for over twenty years.[1] On March 20, 2004, she suffered a

[1]Most of the facts cited by the parties and accepted by the trial court in the present case were taken from

work-related injury to both knees. In March of 2009, she settled her worker's compensation claim against Employer. The settlement order required the Employer to provide future medical treatment for her knee injuries.

On February 6, 2011, Employee fell at work and hurt both knees again. She reported the injury and sought medical attention from Dr. Kurt Spindler, an orthopedic surgeon, who had treated her throughout the years following the first injury. Dr. Spindler treated her with steroid injections and physical therapy. She did not get the same relief, however, that she got from the same treatment following the first injury.

In July of 2011, Dr. Spindler recommended bilateral knee replacement. When Employer refused to pay for the surgery, Employee filed a motion in the General Sessions Court of Warren County seeking to compel the Employer to cover the expense under its continuing obligations in the 2009 settlement. The Court entered an order on October 6, 2011, finding that the need for the knee replacements was causally connected to the 2004 injury and the treatment was covered by the medical provisions of the 2009 order.

Employee then filed an action in Warren County on March 7, 2012, seeking benefits for the February 2011 fall. On March 22, 2012, Employer filed this action in the Chancery Court of Davidson County seeking a declaration of the rights of the parties in relation to the February 2011 fall. The case languished below while the parties sparred in Warren County. On January 2, 2013, the lower court ordered the parties to set the case for trial or dismiss it by April 5, 2013.

The case below finally got back on track, and the Employer moved for summary judgment on the ground that Employee was judicially or equitably estopped from making a claim for benefits for the February 2011 fall. The estoppel argument was based on Employee's testimony and her attorney's agument in the 2011 proceeding in Warren County seeking to get the knee replacements covered by the future medical provisions related to the 2004 accident.

The lower court granted the motion for summary judgment and dismissed the claim.

The Employee has appealed, and the appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and report of findings of fact and conclusions of law.

Employee's earlier worker's compensation action. *Pamela A. Jones v. Vanderbilt University*, M2001-02250-WC-R3-WC, at *5-6 (Tenn. Sp. Worker's Comp. Panel, Oct. 12, 2012).

II. Standard of Review

Summary judgment may be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04; *see also*, *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008); *Penley v. Honda Motor Co.*, 31 S.W.3d 181, 183 (Tenn. 2000). The party moving for summary judgment bears the burden of demonstrating both that no genuine dispute of material fact exists and that it is entitled to a judgment as a matter of law. *Martin*, 271 S.W.3d at 83. The pleadings and evidence are viewed in the light most favorable to the party opposing the motion. *Hilliard v. Tennessee State Home Health Services, Inc.*, 950 S.W.2d 344, 345 (Tenn. Sp. Worker's Comp. Panel 1997). Rarely are such motions "an option in a contested workers' compensation action." *Berry v. Consol. Sys., Inc.*, 804 S.W.2d 445, 446 (Tenn. 1991).

Summary judgments enjoy no presumption of correctness on appeal. *Summers v. Cherokee Children & Family Servs., Inc.*, 112 S.W.3d 486, 507 (Tenn. Ct. App. 2002). Because our inquiry on appeal involves purely questions of law, the standard for reviewing a grant of summary judgment is de novo without any presumption that the trial court's conclusions were correct. *Webber v. State Farm Mut. Auto. Ins. Co.*, 49 S.W.3d 265, 269 (Tenn. 2001).

Judicial Estoppel

In granting summary judgment for Employer, the trial court ruled that Employee was not entitled to recover benefits based on the February 2011 incident under the doctrine of judicial estoppel. This Court has said that

> [t]he distinctive feature of the Tennessee law of judicial estoppel (or estoppel by oath) is the expressed purpose of the court, on broad grounds of public policy, to uphold the *sanctity of an oath.* The *sworn statement* is not merely evidence against the litigant, but (unless explained) precludes him from denying its truth. It is not merely an admission, but an absolute bar.

Cracker Barrel Old Country Store, Inc. v. Epperson, 284 S.W.3d 303, 315 (Tenn. 2009) (quoting *Sartain v. Dixie Coal & Iron Co.*, 150 Tenn. 633, 266 S.W.3d 313, 318 (1924)). The doctrine applies to "sworn statements made in the course of judicial proceedings," and it is applicable only when a party has attempted to contradict by oath a sworn statement previously made." *Cracker Barrel*, 284 S.W.3d at 315; *see also Allen v. Neal*,

217 Tenn. 181, 396 S.W.2d 344, 346 (1965) (noting that "[j]udicial estoppels arise from sworn statements made in the course of judicial proceedings, generally in a former litigation, and are based on public policy upholding the sanctity of an oath and not on prejudice to adverse party by reason thereof, as in the case of equitable estoppel").

In *Elmore v. Fleetwood*, 309 S.W.3d 901 (Tenn. 2009), the Court concluded that the trial court erred in applying judicial estoppel where the employer initially agreed that the employee suffered separate injuries but later changed its position. After noting that "judicial estoppel is applicable only when a party has attempted to contradict by oath a sworn statement previously made," the Court concluded that "statements made by counsel for the parties in connection with [the employee's] motion, [the employer's] response to that motion, or in other pleadings, were unsworn, and therefore do not provide a basis for application of judicial estoppel." *Id.* at 905-06.

The trial court held that the Employee was estopped from asserting a claim for benefits attributed to the 2011 fall because of her prior position that the knee replacements were covered by the medical benefits provision in the order settling her claim.

As support for this conclusion, the trial court quotes the following undisputed testimony from the Warren County proceedings:

> Q. And were you doing so well after those injections that you actually cancelled an appointment in December of 2010?
> A. Yes.
> Q. Did you have subsequent problems that caused you to return to his office in the calendar year 2011?
> A. Yes.
> Q. And, in fact, did you go back to see him in April, specifically April 5, 2011?
> A. Yes, I did.
> Q. And if his medical record or office note of April 5, 2011, read, quote: Chief complaint, bilateral knee pain related to her original injury in 2004, closed quote, would you agree that that was your chief complaint?
> A. Yes.
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> * * * *
>
> Q. And have both knees been the subject of his medical care since the 2004 fall?
> A. Yes.
> Q. Now, did the injections that he administered to both knees in the calendar year 2011 work?

A. No.
Q. Did you get the relief from those injections that you had gotten from the injections in 2010?
A. No.
Q. Tell me how your condition progressed or deteriorated, if it did, in the calendar year 2011?
A. Once—the pain was different. My knees—I got to where I could not walk almost out [of] the building after my shift.

The trial court also quotes counsel for the Employee's argument in the same proceeding:

> The testimony is undisputed that she has had continued medical care form Dr. Spindler for both knees, not one knee, but both knees. And, in fact, as recently as April the 5th of 2011 when she returned most recently or for the first time in this calendar year, Dr. Spindler himself wrote: Chief complaint, bilateral knee pain related to her original injury in 2004. Now, that's not our record. That's Vanderbilt's doctor who has been treating my client's record. He goes on to say under Assessment and Plan, April 5th, 2011, quote, At this point she has aggravated her arthritis, which relates to the original 2004 injury and to the episode that brought her in. That's a quote. For him now to say, oh, well, everything to date—everything to date through July of 2011 has been related to the 2004 injury but going forward, since her medical care now requires knee replacements, we're going—we're not—I'm not going to hold Vanderbilt responsible for that medical care. Well, with all due respect to Dr. Spindler, that decision is your decision, Judge. That's not Dr. Spindler's decision, nor is it a case manager's decision, nor is it Vanderbilt's decision.

We cannot conclude that the Employee's position in the Warren County case (that her knee replacements were covered by the continuing medical provisions settling the 2004 case) amounts to an assertion that she did not sustain <u>any</u> injuries from the 2011 incident. Judicial estoppel, therefore, is not a bar to her claim. As there is no evidence that the Employer changed its position in reliance on her position in that case, there is no basis for the equitable estoppel claim. In fact, the Employer has always staunchly resisted paying anything under the 2009 order or for the 2011 fall.

It may turn out that the Employee's claims relating to the 2011 fall will be difficult or impossible to prove, but that determination can only be made after the proof is fully developed.

We, therefore, reverse the trial court's grant of summary judgment declaring that the Employee is estopped from making any claims for the 2011 fall and remand the case to the lower court for further proceedings consistent with this opinion.

Tax the costs on appeal to the Employer.

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BEN H. CANTRELL, SR. JUDGE

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Judgment Order

This case is before the Court upon the motion for review filed by Pamela A. Jones pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well taken and is, therefore, denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Vanderbilt University, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

JEFFREY S. BIVINS, J., not participating